SPEECH

OF

MR. JOSEPH SEGAR,

(OF ELIZABETH CITY AND WARWICK,)

ON THE

WILMOT PROVISO.

DELIVERED IN THE HOUSE OF DELEGATES, JANUARY 19, 1849.

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SPEECH.

The resolutions of the joint committee being under consideration, Mr. SEGAR said:

I had not designed, Mr. Speaker, to take part in this discussion; but my constituents expect me to sustain the resolutions on your table, and to vindicate their rights and interests in the premises, not by my vote only but by argument. I bow to the mandate of those who have the right to command me, and I rise, in their name, to enter a solemn protest against the power of congress to prohibit slavery in the territories, or in other words, to enact the Wilmot Proviso. But it is due to myself to declare, as I now most explicitly do, that so far as my *vote* is concerned, I have no need of any intimation from my constituents. Despite the criticisms of my friend from Harrison, "with all their sins and imperfections upon their head," the resolutions command my heartiest approval.

I shall make an honest endeavour, Mr. Speaker, to approach this grave subject with feelings utterly divested of party. I am a decided party man, I confess. I am a Whig—have been from the earliest days of the party—have reared no other flag—fought under no other banner. My modes of thinking have assumed, of course, a strong party cast. But on *this* subject I cannot, dare not, think or act as a party man. It rises infinitely above all mere party considerations. It is a great question, if I may so speak, of *magna charta;* of first principles; of guaranteed right. It may be, if our northern brethren will so have it, a question of union or of disunion—that mightiest, gravest, most fearful issue ever involved in human affairs, or presented to the contemplation of civilized man. God forbid that I should approach a subject like this with one emotion of party impulse! I should dishonour myself, and violate every obligation of representative trust and moral propriety.

If the preliminary objection taken by the distinguished gentleman from Fauquier, that we have no right to take cognizance of the subject matter of the resolutions, be well founded; and if, to use his strong language, the action of this legislature will involve an "outrageous and insulting assumption of power," there is an end of the question, and it is our duty to lay the resolutions on the table, and there let them sleep, until we shall be roused up by some startling deed of actual aggression. But we need not be "frightened from our propriety" by the grave animadversion of the gentleman from Fauquier. There is no such want of authority as he alleges. I hold the power of this general assembly to be utterly unlimited, save by the restrictions of our own constitution, and the prohibitions of the constitution

of the United States. But there is nothing in the limitations of either of these instruments to forbid our action. The objection, therefore, to our want of authority falls to the ground, and we shall not, in taking cognizance of this matter, commit the gross assumption charged by the gentleman from Fauquier. We shall be acting strictly within the line of our rightful powers.

Sir, the gentleman from Fauquier has himself conceded the whole question of power. He admits that the representatives of Virginia here may take cognizance of federal matters in certain cases; in those, for example, of actual assault upon our rights, or to use his own words, "where the state is directly injured." This is a concession of jurisdiction; besides, the gentleman has submitted a series of resolutions of his own, which surely he would not have done, were it an act of gross assumption in this legislature to take cognizance of the subject.

Again, it is admitted we may take jurisdiction of the subject, *provided* we couch our resolutions in such terms as that all may agree. This would be to postpone action altogether, not only in this, but in all other cases; for God has so constituted the human mind that men will differ, even on the plainest questions. The friends of the joint resolutions have been taunted with the reproach of having reported such as do not command the support of all; but do not gentlemen see that this reproach may be well retorted upon them? You do wrong, say they, in bringing forward resolutions on which we cannot all agree; and yet they, who venture the animadversion, turn immediately round, and themselves offer resolutions which concede the constitutional power of congress to pass the Wilmot proviso—a concession which prostrates every bulwark of southern rights, and surrenders, not the outposts only, but the citadel itself:—resolutions which would be condemned by the voice of nineteen twentieths of the people of Virginia, and which will not, perhaps, command a dozen votes on this floor!

After all, (said Mr. S.,) it is a question of pure expediency, whether we shall take action or not; and about this, I marvel how gentlemen can differ. Shall we wait until the evil is upon us? Do we bring up the fire engine after the house is burned down? Do we wait until the patient is in the last agony of the death struggle before we send for the physician? If a man design to rob me or to beat me, am I to wait until he ties me before I resist? Sir, incipient steps against our rights have already been taken. A committee of congress has actually been instructed to report a bill applying the principle of the Wilmot proviso to the new territories, and another to abolish slavery and the slave trade in the District of Columbia. The evil is at our threshholds. All propositions, too, for an adjustment of the vexed question have failed. The Maryland portion of the district will not be ceded back, and the proposal to erect a state out of New Mexico and California has been reported against by the judiciary committee of the senate of the United States, as being barred by constitutional impediment. Now if, while these things are transpiring under our very noses, and while, too, the legislature is in session, we say nothing, what will our silence be but acquiescence, and what will ac-

quiescence be but ruin? Sir, we must speak out, or we give encouragement to those who are meditating outrage upon our rights.

Strange, strange policy is that, Mr. Speaker, which asks *us* to do nothing, while every day the northern states are passing resolutions instructing their representatives in congress to vote for the Wilmot proviso, and taking ground that no new slave states ought to be admitted into the federal union. Silence, under such circumstances, will be the veriest impolicy, and a slavish surrender of all our northern assailants demand. Fatal inactivity will it prove!

But all doubt of the propriety of this movement is removed by the information which has reached us, that our representatives in congress desire action at our hands. The distinguished gentleman from Berkeley, (Mr. Faulkner.) whose heart, I rejoice to know, is warmly with us on this great question, who is recently from Washington, informed us the other night, in solemn tone, that our representatives there are looking with hope to Virginia. They are on the spot—are at the very point of danger—know best what is transpiring around them—understand well the necessity for action; and to their views we ought to accord the highest respect. What better guide can we have? And taking the obnoxious measures already referred to, in connection with the intelligence received from our delegates in congress, how can we doubt the propriety of passing these or similar resolutions?

I have heard it whispered (said Mr. S.) that recent developements shew that even the south are divided on this question; and this circumstance is held up to deter us from taking action. Sir, I much fear there are men of both political parties in the south—I mean, of course, none on this floor—who are courting northern popularity, and whose views of personal ambition have gotten the better of their fidelity to the south. Or, perhaps, there be those who, from their central position in the south, not being exposed to the sufferings and perils of a border location, are indifferent on the subject which now engages our solemn deliberations. In either case, there is the greater necessity for *our* action. However it may be with others, *with us* it is a question of self-preservation—of life or death. And however others may prove delinquent, let *us*, who have so much at hazard, look well to it before we concede every thing to our assailants.

We have, moreover, Sir, taken our position. We planted ourselves in 1847 on certain ground, on which all agreed to stand, and the resolutions before us constituted the ground on which we then stood. To change our position now; to adopt at this time resolves less decided and stringent than those we agreed on then, will be a retreat and backing out from a position deliberately taken. Such a step would scarcely escape the observation of northern sagacity, and would operate as an inducement to northern invasion of our rights, already sufficiently unscrupulous to excite our most serious apprehensions. For these reasons, if for no other, I cannot yield my support to either set of resolutions submitted by the gentlemen from Fauquier, Fairfax and Loudoun. They do what I can never consent to do: make us change our position, and acknowledge that position to be a false one: they do not march up to the crisis: they ask us to concede the constitu-

tional power of congress to pass the Wilmot proviso, which the south can never concede, and which, for one, I will never concede while life lasts. To give up that is to give up all. It shoves from the south the last plank on which it can float. It is the preliminary step, the entering wedge, to the entire abolition of slavery.

And as for the objection, that the members of this legislature have not been selected with especial reference to action upon this subject, I must say with entire deference to those who make it, there is little in it. It proves too much: it would be fatal to all action, even in cases of the utmost emergency—of the most direct and dangerous assaults upon our rights. Suppose, for example, congress were this moment to abolish slavery in the states, and the fact were telegraphed to us in our seats, would my friend from Fauquier, and those who act with him, patiently wait until a special legislature should be selected for the special outrage? Should we sit here "deliberating in cold debate" whether *this* or a *subsequent* legislature should meet the injury and redress the wrong?

Sir, the legislature of 1798 were not selected with any specific reference to the unconstitutional action of the federal government; yet they *did* act, and that action was efficient, for its effect was the indignant denunciation and the speedy repeal of the obnoxious measures (the alien and sedition laws) against which that action was directed.

The simple truth is, that we were all elected to this body with the general trusts and responsibilities of the representative character, which are generally indefinite, and do not look to or contemplate, because they cannot foresee, all the emergencies which may call for the exercise of representative discretion. Do we know the sentiments of our constituents? that is the question, and the only question. If we know them, no matter how we became possessed of them, it is our duty to carry them out. Now, I take it that no one on this floor can mistake the wishes of his constituents on this subject. For one, I know full well that, if I were to dare vote against these resolutions, and then shelter myself under the suggestion of the gentleman from Fauquier, that I was not elected with special regard to this subject, they would doom me to a retirement from the public stage, which would endure much longer than that which I suffered under the proscription of a certain hard and iniquitous law of this commonwealth.

It is our clear right, then, and our obvious duty to take action in this matter. We may not, and do not combine the best materials in the land, for the very reason suggested by the gentlemen from Fauquier, that we were not purposely chosen for the emergency that besets us. There is much of the talent of Virginia that is not here. There are, doubtless, in the quiet walks of private life, many sons of the Old Dominion who are abler, far, than the generality of the members of this house; but, Sir, such as we are, limited as our capacities may be, we ought to do our duty to the best of our ability; and having done this, we can take to our consciences the consolation administered by the great moral bard of England:

> "Who does the best his circumstance allows,
> Acts well, does nobly, angels could no more."

I come now to the constitutional question. Has congress the power to enact a law prohibiting the citizens of the slave states from migrating with their slaves to the territories of the United States? I utterly deny the existence of such a power.

Some have deduced it from the broad assumption, that congress has the general right of legislation for the territories; and the opinions of Judges Kent and Story have been referred to, to shew that the right is "exclusive, absolute and universal." If any limitation was meant, it was not stated or defined. I need not waste time in controverting a doctrine so monstrous and absurd. It makes congress omnipotent in the territories; gives it, when legislating there, powers *dehors* the constitution. It might pass an *ex post facto* law, or make an established religion. The conclusive answer is, that congress can exercise no power, either in the states or the territories, that is not either expressly granted in the constitution, or which is not necessarily deducible from those which *are* expressly granted. It has been so decided by the supreme court of the United States, in the celebrated Cohen case, though such a decision were matter of entire supererogation.

But the gentleman from Fauquier derives it from the power to acquire territory. If I apprehend his argument, it was in this wise: Congress has the right to acquire territory; the right to acquire carries with it, necessarily, the power to govern and to legislate: slavery is one of the ordinary subjects of legislation; there is no limitation in the constitution on the power to legislate on the subject of slavery: therefore, congress has *all* power to legislate on this subject in the acquired territory.

The power of congress to legislate in the territories, I shall not presume to controvert; and I agree that it is derived from the source from which the gentleman from Fauquier derives it, the power to acquire territory. And I concede, further, that slavery is one of the usual subjects of legislation, and that congress may legislate about it in the territories. But here the gentleman from Fauquier and myself must part. I cannot follow him to the conclusion at which he arrives, that congress may *so* legislate in the territories as to deprive slaveholders of the right of going thither with their slaves, and having them, when there, protected as property.

I am told that the moment I concede that congress may legislate at all on the subject of slavery in the territories, I must shew a limitation on the power, negativing the Wilmot proviso, or give up the question. I admit the *onus* of pointing out the limitation is upon me, and this is precisely what I propose to do.

There is no *express* prohibition, I allow; but express prohibition is by no means necessary. There are *implied* prohibitions, arising from the fundamental principles and general character of our institutions, which are just as effectual to limit and restrain the power of congress as the most positive, express restriction. Let us illustrate by examples.

Suppose congress were to pass a law giving away the public lands in the territories—the gold region in California, for instance: would such a law be constitutional? Certainly not; because it would defeat

the very objects for which territory is acquired, and violate the common rights of all the states. Yet there is no express provision prohibiting it.

Or, taking a more palpable illustration—suppose congress should, by law, vest in the governor of a territory legislative and judicial functions, making him lawgiver, judge, and executive: there is in the constitution no express inhibition of such an enactment. Yet it would be a flagrant violation of that instrument. It would be a concentration in one man, of executive, legislative and judicial powers—a thing which, though not forbidden in express terms in the constitution, is nevertheless clearly prohibited by the general spirit and genius of that constitution, and repudiated by that fundamental maxim of all free governments, appertaining more particularly to our own, which requires that the legislative, judicial, and executive departments shall be separate, distinct and independent.

These illustrations are conclusive to shew that a thing may be forbidden by *implication*, as effectually as by the most *express* restriction. In other words, *prohibitions* may be implied, as well as the *means* for carrying into effect the clear substantive grants of the constitution.

Where, then, is the implied prohibition that makes it unlawful in congress to pass the Wilmot proviso? Where do we find that restrictive mandate of the constitution which pronounces unconstitutional an act of congress that forbids the citizens of the southern states from migrating with their slaves to the newly acquired territories?

Sir, I find it in the great principle of the entire and perfect equality of all the states of this confederacy—a principle running through all the provisions of the constitution, and as palpably stamped upon it as one of its great, leading fundamental features and principles, as if it were written down in the most express terms that language can supply.

I lay it down then, as a proposition not to be impeached by the most ultra latitudinarian in the land, that in all the great moral capacities of sovereignty, the states of this Union are unreservedly equal. Putting the strongest case, the little state of Delaware, pent up in her narrow confines, scarce equal to a single county in Virginia, is, in the sense I am considering, the equal, the full equal of her empire sister, New York. She boasts not the same broad domain, nor the like brilliant commerce, not the fortieth of her population, nor the hundredth of her wealth and resources. In the distribution of a common fund she would not share, it is true, as much as New York, because that would be one of the very inequalities condemned by the general principles of the constitution. But I do affirm that in the *quality* of right arising under the constitution—in all the moral characteristics of a state—in dignity, in privilege, in benefit, in freedom, independence and sovereignty—the little state of Delaware is the equal of the great state of New York: just (to use the illustration of Vattel) "as a dwarf is as much a man as a giant, and the smallest republic as much a state as the greatest empire." It is in this sense the states are equal. The ægis of the constitution is thrown equally over all; there is no immunity enjoyed, or that can be enjoyed by one, that does not pertain and belong to another and to all: and if the federal government, which is

but the general agent of these coequal sovereignties, does any act that makes the slightest discrimination between the one and the other, it is a departure from that equality which is the very basis of our federative system, and is as much an infringement of the constitution as the flat disregard of the most express of its requirements. The proposition is a truism. Who shall dare deny it?

But does the Wilmot proviso invade this great principle of state equality? I hold that it does, and most palpably and grossly.

It is unequal in this,—that it allows the citizens of the free states to go to the territories with their property of every kind, while it denies the like privilege to the citizens of the slave states. This is not only unequal, it is degrading and insulting to the southern states. It is placing them on a lower platform than their northern sisters. May not a state be degraded through her citizens? Is not Virginia insulted and injured in her sovereign rights, by any discrimination made against those citizens of hers, who owe to her their first allegiance, and to whom she owes the first duty of protection?

It is unequal also in this,—that it takes to the free states the exclusive enjoyment, the monopoly of a common property—of territories acquired by the common blood and common treasure, and which belong as much to one state as to another. Gentlemen say this is no discrimination. Sir, it is an unequal, unjust, odious, dishonourable, degrading discrimination.

But it is argued by the gentleman from Fauquier, that the right which the states have to the territories, is one which does not pertain to them as *states*, but to the *individual citizens* of the states; and thus it is attempted to weaken the argument against the Wilmot proviso deduced from the general equality of the states.

I hold that the states, as states, *have* this territorial interest and right. Sir, who framed the confederation? Who made the Union? Who were the parties to the federal compact? Who constituted the general agent? Who executed to that agent the power of attorney under which, and which alone, it acts? The individual citizens of the states? By no means, Mr. Speaker. It is an historical fact, that the states, acting as states, as separate sovereignties, adopted the federal constitution, and defined the powers and the capacities of the new government. The people of the United States did not meet in one aggregate mass to adopt the constitution, but the people of each state met separately, and acted separately; each voting as a state, as a separate, independent sovereignty. Besides: Were not the new territories acquired by the common blood and common treasure of all the states? Did not Virginia stand, in the Mexican war, side by side with Massachusetts, as they did shoulder to shoulder in the revolution? Did not the best blood of each drench the Mexican soil? Do not the bones of Webster, and Lincoln, and Irwin, and Mason, and Thornton, and Alburtis, bleach on the same battle field? Did not each state contribute its share in the general charge and expenditure? And when the federal government called for troops, on whom was the requisition made? Upon the individual *citizens* of the states, or upon the states *as states?*

But, to illustrate this position more clearly, let us suppose a peaceful dissolution of the Union to have taken place: would not the states be entitled to their distributive shares of the common property, the territories? And if a division were about to take place, to whom would it be divided out? Not, Sir, I presume, to the individual citizen, but to the states themselves. On every principle, then, I maintain that the states *have* a common right to the territories, of which they cannot be deprived without violating the common equality.

But I take the gentleman from Fauquier upon his own ground, as I understood him in his argument, and as he has just explained it. The right to the territories contemplated by the constitution, (says he,) is the right of the individual citizen. That is the right over which the constitution throws its shielding power; and if (he said) the Wilmot proviso makes a discrimination in favour of the citizens of one state against those of another, it is clearly unconstitutional. This, Sir, is a concession of the whole question. The Wilmot proviso *does* make such a discrimination. Take examples. A Yankee goes to California with his brass clocks and wooden nutmegs. These are recognized there as property; protected as such; it is larceny to steal them; and the thief is punished by the laws of the United States for the theft. But a citizen of Virginia goes thither with his slaves: those slaves are not recognized or protected as property; it is no larceny to steal them; and the man who kidnaps them is not punishable by law. Or to take a more palpable illustration; it is unequal in this—that, while it allows the citizen of Massachusetts to migrate to the territories with *all* his property, it permits the citizen of Virginia to go with only a *portion*. The goods, wares and merchandize are regarded and protected as property; but a slave, as much property as dry goods and tinwares or any other chattel, so recognized by the constitution—the moment he puts his foot on the soil of the territories—loses his character as property, and "stands redeemed, regenerated and disenthralled by the irresistible genius of universal emancipation." If there can be a more unequal and humiliating discrimination than this, I cannot conceive it. On the admission, then, of the gentleman from Fauquier himself, I claim that the Wilmot proviso involves an unequal discrimination against the citizens of the southern states, and is, on his argument, unconstitutional.

There is but one way to invalidate this reasoning, and that is to shew that slaves are not, like the wooden nutmegs, property. This, I presume, no man can demonstrate. The constitution recognizes them as property. They have been, and may be again, subjects of direct taxation for carrying on the common wars. Fugitive slaves may be reclaimed. But, Sir, even if there were no constitutional recognition of them as property, they would be property still. Slaves have existed as property in all ages and countries of the world; in the dark ages of the past, and the bright ages of the present; in the age of the Patriarchs, and in that of the Apostles; in Pagan lands, and in Christian climes; from the times of Abraham and of Lott, to the rising of Bethlehem's Star; from the days of St. Paul, who preached the obedience of servants to their masters—to this proud, bright day of civil and religious liberty, when the Priest and the Lawgiver, the Bible and the

Constitution, together recognize the existence and the sinlessness of slavery, and its characteristic as property. I say again, that slavery has existed in all ages of the world, and will, in my judgment, exist in all ages to come; because I believe it to be the ordination of God himself, and property in slaves was acquired originally precisely as all other property from time immemorial has been acquired—by first and continued possession. Hence I reason, that though the constitution had been silent on the subject, slaves would be property nevertheless, and the owner of that species of property would have as clear a right to remove to the territories with it, as the owner of the wooden nutmegs with his.

Mr. Speaker, this question of slavery was once deliberately examined and considered in all its bearings in the senate of the United States, I believe in the year 1806; and as bearing directly on the point I am considering, I beg leave to read to the house a most interesting extract from the writings of Mr. Giles, who was an actor in the scene:

"The principle contained in these provisoes, (says Mr. Giles, giving a history of the bill abolishing the slave trade,) produced the discussion of the following questions: Has slavery existed from the beginning of the world to this day, as far as authentic accounts of the human race have recorded? Is slavery recognized and sanctioned by the constitution of the United States? Is slavery recognized and sanctioned by the Holy Scriptures? Is slavery recognized and sanctioned by international law? Is slavery recognized and enforced by the municipal laws of individual nations, and particularly by the municipal laws of the several states? What coercive acts performed by one, or a number of persons, upon the body or bodies of others, would have the effect of reducing those others to a state of slavery; or in other words, to subjection to the will and disposition of the person or persons exercising these coercive acts, according to the municipal laws of individual nations, and the sanctions of international law?

"All these questions were most ably discussed, upon legal, political and philosophical grounds, and eventuated in the conviction of every one, that notwithstanding the refined sensibilities of the present times, slavery then was, and ever had been, a legal and actual condition of man, as deduced from all the preceding authoritative texts."

I have thus endeavoured to shew that, though there is no *express* provision of the constitution limiting the power of congress over slavery in the territories, it is forbidden by the implied prohibitions of that instrument from passing the Wilmot proviso.

Again—it is equally repugnant to the compromises of the constitution touching the subject of slavery. These compromises, though not written down in full, with pen and ink, in the constitution, are legibly written in its history—and are as well understood and just as binding as if they were put down in terms the most explicit. The only question is how far these compromises extend. They reach to the protection of slaves as property, as much without as within the limits of the states. Wherever a slave is found in the common territories, the federal government, which is but the general agent or trustee of all the states, the common owners, is bound to recognize that

slave as property; and if that general agent does any act to the contrary of this, it violates the true meaning and spirit of the slavery compromises of the constitution. Suppose, at the time the constitution was framing, the northern people had said to their brethren of the south, that *their* construction of this compromise was that they should take to their own use and monopolize any territories which might be afterwards acquired; would this Union have ever been formed? Would not the southern states have, with scorn, spurned the confederation?

Sir, let any man read attentively the history of the constitution; let him call back to memory the scenes of the past; the excited debates; the anxious solicitude; the alternating hopes and fears; the now bright, the now gloomy forebodings of those matchless sages who devised this glorious fabric of Union: let him turn to the trying difficulties that beset our patriot fathers while engaged in the holy work of fashioning the bonds that make us a great, united, and happy people: let him reflect that these thrilling scenes and unhappy embarrassments were altogether on account of this slavery question, and were removed only when a solemn guarantee was given that slave property should have the shield of the constitution to uphold and protect it: let these things be remembered, and then say if the Wilmot proviso is not forbidden by the compromises of the constitution, and condemned by every consideration of honesty and good faith.

To take another view of this subject, the federal government is the trustee for all the states, holding the trust fund, the territories, for the common and equal good of those who raised the trust, and constituted the trustee. And the gentleman from Fauquier admits the general government to be a trust, as all government is, but says the trust is final, and congress the final judge. Now suppose congress grossly abuse the trust—depart palpably from the terms of the trust: is congress, the trustee in the case, to judge whether the trust has been faithfully executed or not? Is the *cestuy que trust* to stand by and let the trustee have his own way, and arbitrarily decide as to the proper execution of the trust? That were to set at naught the ordinary laws of trust, make the wrong-doer the judge of his own wrong, and unite legislative and executive powers in the same head.

I conclude, on the whole, that the Wilmot proviso being forbidden by the implied prohibitions, the fundamental principles and compromises of the constitution, congress has no authority to apply it to the new territories, and that it becomes us to enter our solemn protest against it.

I propose to consider, next, the argument of the gentleman from Alexandria. He maintains that the phrase to "make all needful rules and regulations respecting the territories and other property belonging to the United States," confers on congress that power of general legislation from which may be fairly deduced the authority to pass the Wilmot proviso. I might make short work of this position of my friend from Alexandria, by turning him over to the tender mercies of my friend from Fauquier; for the latter strongly repudiated this derivation of the power, and intimated no very great respect for the legal

acumen of him who should derive it from this source. By the way, Mr. Speaker, I may here remark, that the fact that these two gentlemen deduce it from different sources, brings up the strong suspicion that it is one of the "vagrant" class which, seeking many places in the constitution to stand upon, can find not one on which to rest its weary foot.

The answer to this argument has been a hundred times given, and by none more clearly than by the gentleman from Logan, and it is this: that the word *territories*, in the phrase just quoted, from its connexion with the words "*other property*," clearly means lands as property, and that the right to make rules and regulations respecting them, confers no governmental jurisdiction over persons.

But the gentleman from Alexandria fortifies his position by many judicial decisions, in relation to all which I have to say, that they are totally inadequate because inapplicable to the case in point. Not one of the cited cases settles either that congress has the direct power to pass the Wilmot proviso, or such an absolute and universal right of legislation in the territories, as would carry with it, by necessary deduction, the authority to enact it. Let us see:

1. *Gratiot* v. *U. States.* The question here was, whether power given to congress to dispose of public lands, was limited to a power to sell, or included also that to lease.

2. *M'Cullough* v. *The State of Maryland.* This was a case as to the power of congress to establish a bank. No point did arise or could well arise as to the power of congress over slavery in the territories.

3. *Cherokee Nation* v. *State of Georgia.* The main question was whether an Indian tribe was a foreign nation. The fact was adverted to, that congress had established territorial governments in lands occupied by Indians—nothing more.

4. *American Insurance Co.* v. *Canter.* The point in this case was as to the sentence of a court of admiralty in Florida, then a territory. The validity of the sentence was affirmed, and the right of congress to establish territorial governments, which nobody denies: but the decision does not state whether the right was derived from the power to "make needful rules and regulations," or from that to acquire territory, or from any particular source.

5. *Schooner Exchange* v. *M'Faddon.* In this case, the point was whether a public national vessel of France, coming into the U. States to repair, is liable to be arrested upon the claim of title by an individual.

Through all these cases there runs this fatal defect: they do not decide *the extent* to which congress possesses the territorial power, nor does one of them touch or hint at the principle of the Wilmot proviso. To constitute them judicial precedents and make them cases in point, they must have either expressly decided that congress has the unconditional power to prohibit the introduction of slaves into the territories, or such an absolute, universal right of legislation therein, as would give necessarily the power in question. Shew me a case to this effect, and I give up the question.

The judicial decisions, then, cited by the gentleman from Alexandria, are not pertinent to the argument, and if so, the power of congress to pass the Wilmot proviso is yet *res non adjudicata;* and God forbid it should ever be otherwise, for if it shall be, the rights of the southern people to their slaves will not be worth the parchment on which those rights are inscribed.

Legislative precedent, too, is invoked, and many are referred to. First and foremost, is brought up the ordinance of '87, which was enacted in the days of the old confederation. How a measure which had its origin before, and was controlled by rights and obligations antecedent to, the adoption of the present constitution, can be construed into a precedent to elucidate, much less justify an exercise of power under a government constituted with new capacities and functions, is to my mind far-fetched and incomprehensible. The congress of the old confederation might well have the power to prohibit slavery in the territory northwest of the river Ohio, and yet the new government not have it at all.

And this reply disposes of the cases of Indiana, Illinois, Michigan and Wisconsin, in which congress did prohibit the introduction of slavery. This was but the carrying out, in good faith, of the provisions of the ordinance of '87. The new government took the northwest territory subject to the terms and conditions of that ordinance, one of which was the exclusion of slavery in the new states that might be erected. How could congress, when forming the new states, do otherwise than form them according to the conditions on which it had received the territory, out of which new states were to be made?

The act of congress establishing the territorial government of Mississippi, is adduced. Not pertinent to the question. It prohibited the foreign slave trade, but did not embrace the domestic. This it had the right to do, as a result of the commercial power. So thought, at least, Mr. Madison, the Cato of America, whose gentle nature, simple character, calm philosophy, profound learning, well balanced judgment, high intellectual powers and expansive views, made him the model of statesmen, an ornament to his country, and an honour to the age.

But the territorial governments of Louisiana and Orleans—these are referred to with no small triumph by the gentleman from Alexandria, and put forth as settling conclusively the power of congress to pass the Wilmot proviso. It is said that the introduction of slaves into these territories, under certain circumstances, was prohibited. True; but what is the history of the thing? Why, the act of congress establishing these governments, was passed March 26th, 1804, and was virtually repealed by the act of March 2d, 1805, which substituted "a government in all respects similar to that now exercised in the Mississippi territory," to which the 6th article of the ordinance of '87—the anti-slavery clause—did not apply, being specially excepted. So that this boasted precedent was the short-lived creature of not a year's existence; too short-lived and ephemeral, I humbly suppose, to constitute the basis of the huge superstructure of the Wilmot proviso. I might ask, why did congress so soon repeal the law, and may not the

repeal have been made on a conviction that it had transcended its lawful powers?

The Missouri compromise—that, too, is relied on. The obvious reply is, that a compromise does not settle legal principles: it is rather a waiver of the application of legal principles to a particular case. Surely that compromise has never altered a feature or changed a provision of the constitution! That instrument is unalterable, save by amendment in the mode pointed out by itself.

Texas is alluded to. It is said that congress allowed slavery in one portion, (south of 36° 30′,) and disallowed it in another, (north of 36° 30′). With respect to the former, it was perfectly proper; it was but fulfilling the constitution—recognizing the rights of slaveholders, as guaranteed by that instrument—applying practically the great principle of state equality, before adverted to. To this extent, congress has clearly the right to legislate on the subject of slavery in the territories. Such legislation is *consistent with* the constitutional rights of the southern people, while the Wilmot proviso is the flat reverse.

With respect to that part north of 36° 30′, it is embraced by the Missouri compromise, which prohibits slavery north of that line.

And lastly, of Oregon. I said in the commencement of my remarks, Mr. Speaker, that no party bias should govern me. I say, then, that even the Oregon bill is no precedent. It was but a carrying out of the Missouri compromise, by which the south have been always willing to stand, and which it would now gladly embrace as a settlement of this vexed and disturbing question. It is an immaterial thing altogether—slavery is already forbidden beyond 36° 30′, by the terms of that compromise, to say nothing of the inhibitions of climate, soil and location. But there is one answer to all this argument of precedent. Precedent is no fit test of constitutional power. It is too unsafe; its light too dim to chase away the obscurity of legal complexity. Put the claimed power down in the broad, lustrous light of the constitution, and if by that light it is seen obvious and palpable, let it be exercised; but not otherwise.

So much for the argument of judicial and legislative precedent. There is nothing in it.

The gentleman from Fauquier, in illustrating his argument, has thought fit to venture a most grave reproach upon the south. He said the south had set the first example of sectional division, in the opposition of South Carolina to the tariff, and of the south, generally, to internal improvements; and this (he said) had provoked in return, sectional feeling at the north, and united the northern people against us on the question of slavery.

I must express my deep regret, Mr. Speaker, that expressions of sentiment like these should have proceeded from one so distinguished as the gentleman from Fauquier, whose opinions, from his high intellectual and moral position, carry weight with them wherever they are known. I regret it, because they give impetus to that misguided fanaticism which is plotting destruction for the institutions of the south, and weakening the foundations of this happy Union.

Sir, if the charge be true, it is a most awful truth for us of the south; for if *we* have been the aggressors, we shall be responsible for all the unhappy consequences that shall come of that aggression. Let civil commotion raise her blood-black crest among us; let our land be desolated by war's bloody horrors; be its soil drenched in brothers' blood; be the Union crushed: all, all the responsibility will be upon us of the south, if it be indeed true, as charged by the gentleman from Fauquier, that we "cast the first stone," and were the first to offend.

But there is no justice in the charge, no foundation for the reproach—no, not the least. The south did *not* commence this sectional appeal. It began long, and long before the south took her position in regard to a protective tariff and to internal improvements. This anti-slavery agitation, of which we are now reaping the bitter fruits, and destined, I fear, to reap them more bitter still, was commenced as far back as the old confederation—ere, almost, the roar of the cannon of the revolution had died upon our ears—before the constitution was born. It was started in the congress of the confederation.

I am aware that one distinguished southern statesman, Mr. Jefferson, was a party to this proceeding. He was one of the first committee ever raised on the subject, under the old confederation, and which reported the 6th article of the ordinance of '87, excluding slavery from the northwest. It was a most unfortunate occurrence; for here we may date the slavery agitation, which, beginning then, has been continued to this hour, smothered for a while, it is true, but not extinguished, and waiting only the stimulus of increased political power to fan the latent embers into a burning blaze. But let that pass. He has done enough for his country and mankind, to bid us throw the veil of charity over this one error of his public life, however unhappy its results may prove.

Mr. Jefferson's connexion with the subject soon ceased, however, but the agitation was taken up and vigorously prosecuted by the northern members of the old congress, the leaders among whom were Rufus King and Nathan Dane. Effort after effort was made to abolish slavery in the northwest, the territory which had been generously ceded by Virginia to the confederation. The south, on every occasion, presented an unbroken front, but was finally forced to yield, as in the case of the Missouri question, to a compromise—the best it could make—the terms of which were, that slavery should be excluded, but that fugitive slaves should be given up on claim of the owners. At this early day, did our northern brethren sow the seeds of the anti-slavery agitation, which promise so abundant a harvest of sectional dissension. So we, of the south, are *not* the first wrong-doers.

And I think, Sir, if we scan the history of the last war with Great Britain, we shall find abundant evidences of sectional feeling and geographical division on the part of our fellow-citizens of the north, furnished long, long before South Carolina had exhibited that disloyalty with which she has been so much reproached on this floor.

There was strong, even angry hostility to the war in all New England, not that the general welfare and the common honour did not demand it, but that its operation was rigorous upon the commercial inte-

rests of the north; for New England was then almost purely commercial. The south, it was said, was not injuriously affected, being entirely agricultural, and therefore favoured the war. The embargo was resisted; the war denounced as unnecessary; Daniel Webster was sent to congress from a New England state, to make war upon the war; a governor of Massachusetts declared that the nation ought not to rejoice over its naval victories; blue lights were raised along a New England shore, to light the way of the enemy and entrap the gallant Decatur; a Hartford convention, muttering disunion, was assembled; there was a general disloyalty, which gave way only when the atrocities of the enemy, and the brilliant successes of our arms, redeeming past reverses, had roused the indignation of the whole country, and united it against the common foe. South Carolina had set then no example of disloyalty. Her distinguished son, John C. Calhoun, stood in the front rank of those gallant countrymen of ours, who, in the hour of disaffection, bore aloft the banner of the Union. He was an ardent and fearless advocate of the war, and the very pillar of Mr. Madison's administration.

And coming down a little later, who stirred up, in 1819-20, the bitter waters of strife? Who, then, for sectional considerations, placed the Union upon the brink of a yawning precipice, from which it was snatched only by the patriotic efforts of Henry Clay? Who, I ask, got up the Missouri question, which came upon us, as Mr. Jefferson said, "like a fire bell in the night," and alarmed every patriot in the land? "Disloyal South Carolina," as the gentleman from Fauquier characterized her, had not then taken her peculiar position on the subject of the tariff, nor had the south done one act betraying a sectional spirit. I tell the gentleman from Fauquier, it is the north and not the south, that set the first example of geographical division; and that, therefore, his grave animadversion upon the south is without the shadow of foundation.

The gentleman from Fauquier has said, too, that the Wilmot proviso is not a practical question; that it is an immaterial thing altogether; that the Democratic party were fully committed to its immateriality in the presidential canvass of 1848, and stand so still. I do not design (said Mr. S.) to make myself a party to the controversy on this point, between my friend from Fauquier and the Democracy of the country: *non nostrum*. But this I may be allowed to say, that however it may be with the Democracy, the Whigs are not committed to the immateriality of the Wilmot proviso. We regarded it, at least in Virginia, as eminently a practical question, as one of the great issues, if not the main one, of the presidential contest. For one, *I* am not so committed. I fought hard in the canvass of last year, against Gen. Cass, because I thought him at heart a Wilmot proviso man, and gave Gen. Taylor my hearty support, because, among other recommendations, I believed him, on this subject, true to the constitution and the south.

Sir, it is any thing but immaterial. It *is* a practical, a fearfully practical question.

If it were simply and purely a question, whether the principle of the Wilmot proviso should be applied to New Mexico and California,

I should hesitate long before taking an attitude of actual resistance. Seeing through the *extent* and to the *end* of the evil, I should be inclined to think—"better endure the ills we have than fly to those we know not of."

But, Sir, the question is not thus narrowed down. It is, in my judgment, not whether the free soil principle shall be applied to the newly acquired territories, but whether slavery shall be ultimately abolished throughout the Union.

This is a grave charge, I confess, Mr. Speaker, against our northern brethren, but it is sustained by a number of incontrovertible facts, which admit of no explanation but the entire extinction of slavery. Those who have watched the history of the thing, cannot but be satisfied that a progressive assault has been going on against the institution of slavery, which is not designed to stop short of its utter destruction. Let us look at the facts.

It began, as I have already said, under the old confederation. The northern members of the old congress insisted, to the last, on the abolition of slavery in the large region of the northwest, and their perseverance triumphed, the ordinance of '87 having been enacted before, and re-enacted since, the adoption of the present constitution. This gave to the anti-slavery power an immense territory, comprising the present states of Ohio, Indiana, Michigan, Illinois, Wisconsin, and a considerable country yet unerected into states.

The acquisition of this territory satisfied our northern friends for a season: it was next to certain that, with the Union as it was with its then territory, they would have the preponderance in the national legislature, and thus be enabled to control its policy. But *new* territory was acquired: Louisiana was added to the national domain, with a soil and climate admirably adapted to slave labour; and there was danger that the south would acquire the supremacy in the federal councils. Hence, Sir, the Missouri agitation. Does the gentleman from Fauquier imagine for a moment that this movement on the part of the free states had any reference to slavery as an evil or a sin? Can any man suppose that the very people who were most instrumental in the slave trade, who carried on the commerce of the thing, and reaped its profits, who imported the slaves into the country, care a groat for slavery as an evil? In Missouri, it could not operate upon them—it was no ill of theirs. *Sir, their objection to slavery was to it as a political institution, not as a moral evil or moral sin.* It was resistance to the increase of the slave power; a contest between free labour and slave labour. And here again they got the advantage. Rather than make concession to the south—to the slave power—they drove the nation to the very brink of disunion. Acting in that sectional spirit which the gentleman from Fauquier so much condemns in us of the south, but which lies with a thousand times more justice at the door of our northern neighbours: acting, I say, in the very worst spirit of sectional calculation, they opened to the south the yawning gulf of disunion on the one hand, or of surrender on the other.

Well, Sir, what did the south do? Why, in that spirit of patriotic devotion which has ever characterized her, save when her dearest

rights have felt the ruthless hand of invasion; remembering the many blessings of the Union, and calling up the thousand glories associated with its formation and its history; recollecting that its cost was the treasure and blood of our fathers; that the light of its lustrous example was to beckon on enslaved man to the bright destiny of social and political redemption; and that if this Union was lost, it would dash the brightest hopes of human kind: the south, I repeat, acting on these high patriotic considerations, *did* surrender to the north—did yield to the cause of harmony and union, what of right, of constitutional right, it was entitled to retain. She acquiesced in the Missouri compromise, giving up, beyond 36° 30′, five times as much free soil as was left for slave territory south of that line.

But even this large concession has not satisfied the anti-slavery party of the north. And in my judgment, it never will be satisfied, until that has been accomplished which lies at the bottom of all its designs on this subject—and that is, *the ultimate abolition of slavery in the states.* This, I am constrained to believe, is the unholy purpose at which they aim. Again let the facts instruct us.

For long years, our northern brethren have been knocking at the doors of congress for the abolition of slavery in the District of Columbia. What is slavery in the district to them? Is it a grievance of theirs? Are they moved by humanity for the slave? Sir, pass a law when you will, abolishing slavery on condition that, when emancipated, they should be sent to the free states for their abode, and there is not one of them that would not rise up in indignant condemnation of the measure, as the people of Ohio did in the case of the Randolph slaves. Very willing are they to have the slaves free, but when free, they must keep themselves at a distance from those philanthropic friends of theirs who so much sympathize with them in their enslaved condition! Sir, there is no philanthropy in the anti-slavery movement—not the least: it is an effort for political power—for the supremacy of the free labour, over the slave labour principle. The real fanatics of the north; the deluded madmen, as I may denominate them; the Tappans, and Garrisons and Birneys; the feminine quinquegenarians—the Folsoms and Kellys—who have forgotten their sex, and put on the breeches of modern philanthropy: these may be hurried on in their course of madness and folly by a morbid humanity; but the great body of the people of the north are free-soilers of a different class, aiming at the same result, it is true, but governed by a different motive; the result being the annihilation of slavery, the motive the acquisition of political power for a given purpose.

Once more, let the facts be consulted. Turn to the states north of the Ohio. They became members of the national confederacy on the solemn compact of the ordinance of '87, that in consideration of the inhibition of slavery, they were to surrender fugitive slaves escaping into their borders. How many have kept their faith, and passed laws to secure to the master his right to his fugitive slave? Follow your slave into any of those states, and what aid will you get from the constituted authorities, for the recovery of your property? None, Sir, none.

Look at *all* the free states, setting at naught the provision of the constitution relating to the recapture of fugitive slaves. Pennsylvania has passed a law imposing a heavy penalty upon her civil authorities that shall issue process or grant any aid in the recovery of fugitive slaves. Vermont has made it a felony in even a private citizen. New York and Massachusetts have imposed like obstructions. Though your constitutional guarantees are palpable, and, if carried out in good faith, ample; yet if your slave escape into the jurisdiction of a free state, he is gone from you forever. The constitution is spurned, and the law and the mob unite in robbing the slaveholder of his property.

Look at more recent proceedings of the northern states. They look far beyond the Wilmot proviso. Resolutions have been adopted by Vermont, New Hampshire, Massachusetts, Rhode Island, New York, Pennsylvania, New Jersey, Ohio and Michigan, going a step beyond the application of the Wilmot proviso to present territory, and declaring that no new state ought to be admitted into the federal Union, except upon the condition of the perpetual exclusion of slavery. They go so far as to prescribe its exclusion as a condition precedent of admission, virtually declaring that a state, after it shall have become such, shall not choose for itself whether it will have slavery or not, and subverting the first principles of state sovereignty and state rights.

Look, too, at the fate of Mr. Meade's resolution. A proposition involving the most palpable constitutional obligation, asking congress to enforce the guarantees of the constitution in regard to fugitive slaves, is scouted from its halls as unworthy to be entertained! What does this case shew, but that constitutional provision affords the south no security, and that ultimate abolition is the purpose of our brethren of the north?

Look, lastly, at Gott's resolution to abolish slavery in the district, and the instruction to a committee of congress to report a bill applying the provisions of the Wilmot proviso to California and New Mexico.

Take all these acts together, and who can resist the conviction that a progressive attack is going on upon the institution of slavery, and that the final design is its entire extinction? This Wilmot proviso is but a step in the process. Concede it when you will, it will be a fatal concession. Beware how you make it. It will be the Grecian horse within the walls of Troy. Admit it, and the epitaph of Troy may soon be written for the institutions of the south and for this blessed Union.

Mr. Speaker, there is a portion of classic history, which is so aptly and beautifully illustrative of the present position of the south in regard to the Wilmot proviso, that I cannot forbear, even at peril of the charge of pedantry, to bring it to the illustration of the subject before us. It was when the question was discussed by the Trojans, whether the wooden horse should be admitted within the walls of Troy. The lying Sinon of the Greeks had told his tale of treachery, and called the gods to witness that there was no danger in the huge machine. The confiding Thymoetes advised that it should be brought in and located in the citadel. The more cautious and distrustful Capys dissuaded, and urged that it should be committed to the flames. In the midst of the debate, the sagacious Laocoon, the aged keeper of the

citadel, runs down in consternation from the tower, and warns his countrymen, in tones of thunder, against the admission of the fatal horse. Sir, I would commend to those of this house who think of yielding the principle of the Wilmot proviso, the strong warning of the true-hearted and prudent Trojan:

"Quæ tanta insania, cives!
Aut hoc inclusi ligno occultantur Achivi,
Aut aliquis latet error: equo ne credite, Teucri."

No, Sir, trust it not. It will be a fatal trust. This Wilmot proviso is only wanted as a stepping stone to higher assaults upon the institutions of the south—as an entering wedge to rive into fragments the whole institution of slavery; and taking this view of the subject, I regard the concession now of the Wilmot proviso, as a surrender, full and complete, of southern rights—a giving up of the whole question. Looking at the matter in this light, the south ought not to yield one inch of ground more, and to take as firm and decided ground, the very same indeed, as if the question were flatly presented, of the unqualified abolition of slavery in the states.

But we are told the resolutions contain a threat, and we are asked why not strike out the threat? Sir, the resolutions are to be regarded rather as a solemn warning to our brethren of the North that there is a point beyond which our endurance will cease, than as a threat. That solemn admonition we ought to give them. Candour, fairness, policy, demand it, unless we intend to make a tame surrender of all that is dear. But if there *is* a little of menace in the resolutions, who can gainsay its justice? It is high time to threaten when the danger is at our doors; and, in my judgment, if we had taken ere this a more decided stand for our rights, we should not now be discussing these resolutions, because there would have been no necessity for it. Nor shall we be the first to set the example of threat. Our northern brethren menaced resistance to the government in the last war with Great Britain. They threatened to dissolve the Union, if we of the south did not yield all their demands on the subject of slavery, and that threat was pushed to the very point of execution. The Union tottered under their exactions.

The resolutions, it is said, commit us to resistance. What else should they do? If we are not prepared for a quiet surrender of our constitutional guarantees, what can we do but resist, and if we mean in any event to resist, why not say so to all the world, and let the warning fix the responsibility of the consequences upon those who shall force us to the extremity? Besides, do not the resolutions of the gentleman from Fauquier commit us to resistance in the event of slavery being disturbed in the district?

But *how* are we to resist, it is asked? Are we, said the gentleman from Fauquier, to send our little guard to fight the battle of resistance? I tell that gentleman, that when the dark hour of trial shall have come; when the foul outrage upon our rights shall have been consummated, and Virginia, preferring manly resistance to slavish submission shall call her sons around her, it will be no little squad, no petty guard that shall rally to the rescue; but thousands and tens of thousands of her gallant sons will gather under her banner, with stout hearts and strong

arms, ready and willing to share with her whatever fate shall befall her—be it a glorious triumph on the one hand, or annihilation on the other.

How shall we resist? On this point, I might throw myself upon the counsel of my friends from Fauquier and Alexandria. They tell us, there are cases in which *they* would resist; that if congress dare lay touch on slavery in the District of Columbia, they *will* resist, aye, "resist in the threshold, and at every hazard." Let them inform me how *they* would resist, when the evil is at hand, and perhaps we shall not be far apart about the "mode and measure of redress."

How shall we resist? For one, I am willing to speak out and say the worst. Mr. Speaker, I love the Union. In the deep sincerity of my heart, I love it. No one in this broad land has worshipped at its altars, with a purer and deeper devotion. 'Tis connected, in my mind, with a thousand and twice a thousand glorious associations—with the wisdom that conceived, and the blood that cemented it—with our prosperity and strength at home, and our glory abroad—with that gallant flag that flings out the stars and stripes of our country on every ocean, gulf and sea—with that renown which exhibits her unconquered and triumphant on a thousand battle fields—with the bright glories of the past and brighter hopes of the future. I say, Mr. Speaker, I love this Union, this glorious, happy, blessed Union. 'Tis the noblest work of human hands—the "bright particular" conception, if I may so speak, of human statesmanship. Yet, dear as it is, bright as are its glories and rich its blessings—hallowed as it is by the blood of martyred patriots—beacon light though it be to brighten man's pathway to moral and political disenthralment, yet I must declare, if I must, that there is a greater blessing than the Union, a heavier curse than disunion! Sir, when this Union ceases to accomplish the great ends for which it was designed—the guarantee of liberty and equal right—the security of common immunities and common blessings—let it go: for sooner than see the southern states of this confederacy degraded below the northern; or, to bring the matter nearer home, sooner than see this proud old commonwealth degraded in right, degraded in dignity, sunk down to a lower level than any of her sister states; sooner than see dear old Virginia placed upon a lower platform than Massachusetts, her dearest interests invaded, her common rights destroyed, I would see even this Union dashed into fragments forever!

But it is as a friend of the Union that I give these resolutions my support: for I do maintain that those who are for taking strong action at the present crisis, pursue a policy far more calculated to perpetuate the Union than those who recommend the contrary course. If there is any thing that can hasten the catastrophe we all so much deplore, it is the want of union and firmness in the south. Timid counsels will not avail; doubt is ruin; indefinite positions worse than none; faltering resolves equivalent to backing out—an invitation to further aggression—the precipitation of disunion. There is but one reliable means of averting dissolution, and that is decided, unequivocal, undoubting, definite, united action. A bold and undivided front—this, and this alone, can secure the perpetuation of the Union and the endurance of its blessings.